

## **R430. Health, Health Systems Improvement, Child Care Licensing.**

### **R430-4. General Certificate Provisions.**

#### **R430-4-1. Legal Authority and Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. It defines the standards that a person must follow to obtain a residential certificate for child care. This rule further delineates the role and responsibility of the Department in the enforcement of rules pertaining to a Residential Certificate provider and provides criteria for applying sanctions.

#### **R430-4-2. Informal Discussions.**~~[Purpose-~~

~~\_\_\_\_\_ This rule defines the standards that a residential in-home child care provider must follow to obtain a certificate.]~~

Independent of any administrative proceeding, an applicant or certificate holder may request at any time to discuss a Department decision with Department staff.

#### **R430-4-3. Definitions.**

(1) "Certificate Holder" means the legally responsible person that holds a valid Residential Certificate issued by the Department of Health.

(2) "Deficiency" means a violation of any rule provision.

(3) "Department" means the Department of Health.

(4) "Facility" means the building and adjacent property, equipment, and supplies devoted to the child care operation.

(5) "High Risk for Harm" means there is the potential for serious injury to a child.

(6) "Inspection" means observation, measurement, review of documentation, and interview to determine compliance with rules.

(7) "Investigation" means an in-depth inspection of specific alleged rule violations.

(8) "Statement of Findings" means a statement of one or more specific rule violations which, if not corrected, will prompt the Department to take disciplinary action.

(9) "Technical Assistance" means the noting of a rule violation and providing information on how to come into compliance.

#### **R430-4-[3]4. Initial Application.**

(1) An applicant for a certificate shall submit to the Utah Department of Health[~~file~~] a [Request for Agency Action/]~~completed residential [C]certificate [A]application [with the Utah Department of Health-]~~on a form furnished by the Department.

(2) Each applicant shall comply with all regulations, ordinances, and codes, zoning, fire, sanitation, building and licensing laws,[~~regulations and ordinances, and codes~~] of the city, county, municipality in which the home is located.

(3) The applicant shall submit the following documentation as part of the application [The applicant shall obtain the following documents to submit with the application]:

(a) [~~F~~]five hours of [~~d~~]Department-approved training in child care;

(b) current CPR and First Aid certificates from a Department-approved source; and

(c) [~~B~~]background clearance documents as required in R430-6.

(4) The applicant shall submit with the application packet a non-refundable fee as established in accordance with 26-39-104(1)(c).

#### **[R430-4-4. Certificate Fee.**

~~\_\_\_\_\_The residential provider shall submit a certificate fee established in accordance with 26-1-6 and 26-39-105.5(1)(b)(i)(B) with the completed application form.]~~

#### **R430-4-5. Initial Certificate Issuance or Denial.**

(1) The Department shall render a decision on an initial residential certificate application within 60 days of receipt of a completed application ~~[packet or the Department shall deny an application not completed within six months of the submission date of the first component of an application packet].~~

(2) The applicant must reapply for a residential certificate if the applicant does not complete the application including all necessary submissions within six months of first submitting any portion of an application.

~~[2](3)~~ Upon verification of compliance with rules,~~[certificate requirements]~~ the Department shall issue a ~~[Notice of Agency Action—Letter of Certificate]~~ residential certificate for a period not to exceed one year.

~~[3](4)~~ The Department shall issue a written decision denying a residential certificate application if the applicant and the facility are not in compliance with rules.~~[If the Department denies a Request for Agency Action—Certificate Application, the Department shall issue a written Notice of Agency Decision. An applicant who was denied a certificate may reapply for a certificate as a new applicant and must initiate a new request for agency action.]~~

(5) Pursuant to R501-12-4(8)(h), a provider may not have a residential certificate to do child care and a license to do foster care at the same time.

#### **~~[R430-4-6. Letter of Certificate Provisions.~~**

~~\_\_\_\_\_The Letter of Certificate is not assignable or transferable and the residential provider shall make the letter available to the public upon request.]~~

#### **R430-4-[7]6. Expiration and Renewal of Certificate.**

(1) Each residential certificate ~~[Letter of Certificate shall]~~ expir[e]s at midnight~~[,]~~ on the day designated on the certificate ~~[last day of the month, 12 months from the anniversary date of the prior Letter of Certificate]~~, unless previously revoked by the Department.

(2) The certificate holder ~~[Residential child care provider]~~ shall ~~[file]~~ submit a completed~~[Request for Agency Action]~~ residential~~[—][C]~~certificate ~~[A]~~application ~~[form,]~~ and applicable fees~~[, and clearances]~~ to the Department 30 days prior to the current certificate expiration.

~~[(3) The Department shall renew the Letter of Certificate upon verification that the provider is in compliance with all applicable rules.]~~

(3) The Department may extend the residential certificate for an additional 30 days if the residential certificate holder fails to complete the renewal.

(4) The Department shall not renew a residential certificate~~[Letter of Certificate]~~ for a ~~[residential child care]~~ facility ~~[who]~~that is no longer providing child care.

#### **R430-4-7. Change in Residential Certificate.**

The certificate holder shall submit a completed residential certificate application to amend or modify an existing certificate at least 30 days before any of the following proposed or anticipated changes:

(1) increase or decrease of the certificate capacity;

- (2) change in the name of the facility;
- (3) change in the name of the certificate holder;
- (4) change in the address; and
- (5) change in area where child care is provided or a change in interior usable space.

#### **R430-4-8. Residential Certificate Transferability, Posting.**

- (1) The certificate is not transferable.
- (2) The certificate holder shall post the certificate on the premises in a place that is readily visibly and accessible to the public.

#### **R430-4-9. Notice of Intent to Inspect.**

When the Department issues or renews a residential certificate, it will schedule a compliance inspection within 90 days. [When the Department issues the initial Letter of Certificate or the renewal Letter of Certificate the residential provider will be informed of the requirement for initial inspection and that the owner will receive a notice prior to the actual inspection.]

#### **R430-4-10. Compliance Assurance.**

- (1) The Department shall conduct an announced and unannounced inspection of each certified facility to:
  - (a) determine compliance with rules;
  - (b) verify compliance with conditions placed on a certificate in a conditional status; and
  - (c) verify compliance with variance conditions.
- (2) If allegations of *child abuse, child neglect or serious health hazards in or around the provider's home (see UCA 26-39-105.5(1)(d))* rule violations are reported to the Department, the Department shall conduct a complaint investigation.
  - (a) The Department shall not investigate complaints from an anonymous source.
  - (b) The Department shall inform complainants that they are guilty of a class B misdemeanor if they are giving false information to the Department with the purpose of inducing a change in a licensing or certification status.

#### **R430-4-11. Technical Assistance.**

- If the Department finds a deficiency that does not pose a high risk for harm:
- (1) the Department shall offer technical assistance; and
  - (2) the certificate holder shall provide a date by which correction must be made.
    - (a) The correction date shall not exceed 30 days from the date of the inspection.
    - (b) The certificate holder may request a correction date of more than 30 days if circumstances outside the certificate holder's control prevent compliance within 30 days.

#### **R430-4-12. Statement of Findings.**

- (1) If a certificate holder does not correct a deficiency by the correction date provided in R430-4-11(2), the Department shall issue a statement of findings that includes:
  - (a) a citation to violated rule;
  - (b) a description of the violation with the facts which constitute the violation; and
  - (c) a date by which the correction must be made.
    - (i) The correction date shall not exceed 30 days from the date of the inspection.

(ii) The certificate holder may request a correction date of more than 30 days if circumstances outside the certificate holder's control prevent compliance within 30 days.

(2) If a certificate holder violates a rule for which the certificate holder previously received technical assistance, the Department shall issue a statement of findings that includes:

(a) a citation to the violated rule;

(b) a description of the violation with the facts which constitute the violation; and

(c) a date by which the correction must be made.

(i) The correction date shall not exceed 30 days from the date of the inspection.

(ii) The certificate holder may request a correction date of more than 30 days if circumstances outside the certificate holder's control prevent compliance within 30 days.

(3) If a certificate holder violates a rule that creates a high risk for harm, the Department shall issue a statement of findings that includes:

(a) a citation to the violated rule;

(b) a description of the violation with the facts which constitute the violation; and

(c) a date by which the correction must be made which shall not exceed 30 days from the date of the inspection.

(5) If the provider elects not to correct any deficiency, letters outlining the deficiency are sent to the parents or guardians of all enrolled children and to all outside supporting agencies.

(6) If the Department discovers deficiencies as the result of a complaint investigation, the provider cannot elect not to correct.

#### **R430-4-13. Directed Plan of Correction**

The Department may issue a directed plan of correction that specifies how and when cited findings will be corrected if a certificate holder:

(1) fails to be in compliance after a correction date specified in R430-4-12; or

(2) violates the same rule provision more than three times within any 12-month period.

#### **R430-4-14. Conditional Status.**

(1) The Department may place a certificate on a conditional status to assist the certificate holder to comply with rules if the certificate holder:

(a) fails to comply with rules by a correction date specified in R430-4-12;

(b) violates the same rule provision more than three times within any 12-month period; or

(c) violates multiple rule provisions.

(2) The Department shall establish the length of the conditional status.

(3) The Department shall set the conditions that the certificate holder must satisfy to remove the conditional status.

(4) The Department shall return the certificate to a standard status when the certificate holder meets the conditions of the conditional status.

#### **R430-4-15. Revocation.**

(1) The Department may revoke a certificate if the certificate holder:

(a) fails to meet the conditions of a conditional status;

(b) violates the Child Care Licensing Act;

(c) provides false or misleading information to the Department;

(d) refuses to submit or make available to the Department any written documentation required to do an inspection or investigation;

(e) refuses to allow authorized representatives of the Department access to a facility to ascertain compliance to rules;

(f) fails to provide, maintain, equip, and keep the facility in a safe and sanitary condition;  
or

(g) has committed acts that would exclude a person from being licensed or certified under R430-6,

(2) The Department may set the effective date of the revocation such that parents are given 14 days to find other care for children.

#### **R430-4-16. Immediate Closure.**

The Department may order the immediate closure of a facility if conditions create a clear and present danger to children in care and which require immediate action to protect their health or safety.

#### **R430-4-17. Death or Serious Injury of a Child in Care.**

The Department may order a provider to restrict or prohibit new enrollments if the Department learns of the death or serious injury of a child in care, pending the review of the Child Fatality Review Committee or receipt of a medical report determining the probable cause of death or injury.

#### **R430-4-18. Operating without a Residential Certificate.**

If a person is providing care in lieu of care ordinarily provided by parents for more than four unrelated children without the appropriate license or certificate, the Department may:

- (1) issue a cease and desist order; or
- (2) allow the person to continue operation if:
  - (a) the person was unaware of the need for a license or certificate;
  - (b) conditions do not create a clear and present danger to children in care; and
  - (c) the person agrees to apply for the appropriate license or certificate within 30 days of notification by the Department.

#### **R430-3-19. Variances.**

(1) If a certificate holder or applicant cannot comply with a rule but can meet the intent of the rule in another way, he may apply for a variance to that rule. The Department cannot issue a variance to the background screening requirements of Section 26-39-107 and R430-6.

(2) A certificate holder or applicant requesting a variance shall submit a completed variance request form to the Department. The requests must include:

- (a) the name and address of the facility;
  - (b) the rule from which the variance is being sought;
  - (c) the time period for which the variance is being sought;
  - (d) a detailed explanation of why the rule cannot be met;
  - (e) the alternative means for meeting the intent of the rule;
  - (f) how the health and safety of the children will be ensured; and
  - (g) other justification that the certificate holder or applicant desires to submit.
- (3) The Department may require additional information before acting on the request.
- (4) The Department shall act upon each request for a variance within 60 days of the receipt of the completed request and all additional information required by the Department.

(5) If the Department approves the request, the certificate holder shall keep a copy of the approved variance on file in the facility and make it publicly available.

(6) The Department may grant variances for up to 12 months.

(7) The Department may impose health and safety conditions upon granting a variance.

(8) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the varied rule by alternative means;

(b) the facility fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the justification for the variance.

#### **R430-3-20. Statutory Penalties.**

(1) A violation of any rule is punishable by administrative civil money penalty of up to \$5,000 per day as provided in Utah Code Section 26-39-108 or other civil penalty of up to \$5,000 per day or a class B misdemeanor on the first offense and a class A misdemeanor on the second offense as provided in Utah Code, Title 26, Chapter 23.

(2) The Department may impose an administrative civil money penalty of up to \$100 per day to a maximum of \$10,000 for unlicensed or uncertified child care.

(3) The Department may impose an administrative civil money penalty of up to \$100 per day to a maximum of \$10,000 for each violation of the Child Care Licensing Act or the rules promulgated pursuant to that act.

(4) Any person intentionally making false statements or reports to the Department may be fined \$100 for each violation to a maximum of \$10,000.

(5) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, revoke, condition, or refuse to renew a license or certificate.

(6) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

(7) Within 10 working days after receipt of a negative licensing action or imposition of a fine, each child care program must provide the Department with the names and mailing addresses of parents or legal guardians of each child cared for at the facility so the Department can notify the parents and guardians of the negative licensing action.

#### **[R430-4-9. Inspections and Enforcement.**

~~———— (1) Each residential certificate child care provider shall receive at least one annual on-site inspection.~~

~~———— (2) If a serious sanitation, fire or health hazards has been found during an inspection, the Department may, at the option of the residential certificate provider:~~

~~———— (a) Require a corrective action plan for the serious hazards found and make an unannounced follow up inspection to determine compliance; or~~

~~———— (b) Inform the parent's of each child in the care of the provider of the results of the Department's inspection and the failure of the provider to take corrective action.~~

#### **R430-4-10. Sanction Action on Certificate.**

~~———— The Department may revoke a certificate if the provider exhibits evidence of aiding, abetting, or permitting the commission of any illegal act, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the children in care.]~~

**KEY: child care facilities**

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